RECENT CASES

ADMISSIONS — PARTIES AND PRIVIES — STATEMENT OF TRANSFEROR OF STOCK: ADMISSIBILITY AGAINST CORPORATION IN ACTION FOR WRONGFUL REGISTRY OF TRANSFER. — Upon A.'s presenting B.'s certificate of stock indorsed in blank, the defendant corporation, in spite of notice from B. that he claimed the stock adversely, registered a transfer of the stock to C. B. now sues the corporation for conversion of the stock. To prove his ownership, he offers in evidence declarations of A. made while A. possessed the certificate. *Held*, that the declarations are admissible against the defendant as admissions of a predecessor in interest. *Cooper* v. *Spring Valley Water Co.*, 153 Pac. 936 (Cal.).

Statements of one from whom a party claims to derive title, made while he held his alleged title, are admissible against the party as admissions. *Woolway* v. *Rowe*, 1 A. & E. 114; *Guy* v. *Hall*, 3 Murph. (N. C.) 150. See 2 WIGMORE, EVIDENCE, §§ 1080, 1081; 23 HARV. L. REV. 397. Thus the admissions of an assignor of a chose in action are receivable against his assignee. *Glanton* v. *Griggs*, 5 Ga. 424; *Hatch* v. *Dennis*, 10 Me. 244. But in the principal case the corporation did not succeed to any interest of the transferor in the stock. For registry by the corporation is only a step in the transfer. See 2 COOK, CORPORATIONS, 7 ed., §§ 373, 381. And it seems clear that the title to stock does not pass through a corporation in going from the transferor to the transferee. Since the corporation here had notice of the plaintiff's claim, it is true that its right to make the registry depends on the ownership of the transferor. *Cooper* v. *Spring Valley Water Co.*, 16 Cal. App. 17, 27, 116 Pac. 298, 302. See *Mount Holly, etc. Turnpike Co.* v. *Ferree*, 17 N. J. Eq. 117, 122. See 2 COOK, CORPORATIONS, 7 ed., §§ 361, 387. But that fact does not justify the admission of the latter's statements. The theory on which a party's admissions are receivable is to show a discrediting inconsistency with his present claim. See 2 WIGMORE, EVIDENCE, § 1048. Because of the identity of the title held by a party and his predecessor, the common law treated them both as one personality. Hence, the statements of the latter were admitted to show the inconsistency of the former as though they were the statements of the party himself. See *Guy* v. *Hall*, 3 Murph. (N. C.) 150, 152. When this rule crystallized it remained limited to those who were identical in regard to their ownership of the right in issue, and should not now be extended except by the legislature. In the analogous case of a life insurance policy this limitation has been observed. It is avoided as against an innocent beneficiary by the fraud of the insured. *Burruss* v. *National Life Ass'n of Hartford*, 96 Va. 543, 32 S. E. 49. Yet it seems that the insured's admissions are not receivable against the beneficiary to prove his fraud, since there is no legal identity of title between them. *Mutual Life Insurance Co. of New York* v. *Selby*, 72 Fed. 980; *Rawson* v. *Milwaukee Mutual Life Insurance Co.*, 115 Wis. 641, 92 N. W. 378. *Cf. Fidelity Mutual Life Ass'n* v. *Winn*, 96 Tenn. 224, 33 S. W. 1045. See 2 WIGMORE, EVIDENCE, § 1081.

ATTACHMENT — ROLLING STOCK OF NON-RESIDENT CARRIER — BAILEE'S SPECIAL INTEREST AS A BAR TO ATTACHMENT. — A foreign railroad delivered a loaded car to a domestic road under an agreement whereby, after delivery at destination, the domestic road might use the car on the return trip at a small daily rental. The car while unloaded was attached by the plaintiff in an action against the foreign road. The domestic road intervened. *Held*, that the attachment be discharged. *Dye* v. *Denver & Rio Grande R. Co.*, 153 Pac. 502 (Kan.).

It is laid down as a fundamental principle that the attaching creditor can acquire no greater interest in the property than the debtor possesses. See *Shahan* v. *Hertzberg*, 73 Ala. 59, 64; DRAKE, ATTACHMENT, § 245. Where the debtor is not entitled to immediate possession, attachment, which is essentially an assumption of possession, would therefore seem to be precluded. So it has been held that an attachment must be postponed in favor of a prior lien. *Truslow* v. *Putnam*, 1 Keyes (N. Y.) 568. See *Nathan* v. *Giles*, 5 Taunt. 558, 576. The same decision was reached in favor of a bailee for hire. *Hartford* v. *Jackson*, 11 N. H. 145. See *Stanley* v. *Robbins*, 36 Vt. 422, 433; *Brigham* v. *Avery*, 48 Vt. 602, 607. Clearly, therefore, the bailee's special interest must defeat the attachment in the principal case. Such an attachment was also discharged, in an early case, on the ground that it was detrimental to the freedom of commerce. *Michigan Central R. Co.* v. *Chicago, etc. R. Co.*, 1 Bradw. (Ill.) 399. But *cf. Boston, etc. Ry.* v. *Gilmore*, 37 N. H. 410. Again such an attachment has been considered an unauthorized interference with interstate commerce. *Wall* v. *Norfolk & Western R. Co.*, 52 W. Va. 485, 44 S. E. 294; *Connery* v. *Quincy, etc. R. Co.*, 92 Minn. 20, 99 N. W. 365. But the Supreme Court of the United States, at least in the case of cars not in use, has held that the attachment cannot be defeated on this ground. *Davis* v. *Cleveland, etc. R. Co.*, 217 U. S. 157. See 23 HARV. L. REV. 642. It has been suggested, however, that where the bailee has a special interest in the property, his creditor may proceed by garnishment. See 1 SHINN, ATTACHMENT AND GARNISHMENT, § 34. But this would not be feasible in the principal case, for the obligation of the bailee to redeliver does not mature until the car has passed beyond the court's jurisdiction. See *Southern Flour & Grain Co.* v. *Northern Pacific Ry. Co.*, 127 Ga. 626, 630, 56 S. E. 742, 744.

BANKRUPTCY — PREFERENCES — PREVIOUS TRANSFER RECORDED WITHIN FOUR MONTHS OF BANKRUPTCY.— More than four months before bankruptcy an insolvent transferred property to the appellant, which the latter had reasonable cause to believe would result in a preference. The transfer was by deed, which was recorded less than four months before the filing of the petition. By the law of Ohio the unrecorded deed was valid except as to subsequent purchasers in good faith. The trustee in bankruptcy now seeks to avoid the transfer as a preference. *Held*, that the deed is not voidable. *Carey* v. *Donohue*, Sup. Ct. Off. No. 179.

A contract of conditional sale executed more than four months before bankruptcy was recorded within the four months period, at a time when the vendee was insolvent, as the vendor knew. Under the law of Kansas, a conditional sale is not regarded as an absolute sale with a mortgage back. The recording law made such contracts void as against creditors who fastened a lien upon the property by legal process before the contract was recorded. The trustee seeks to avoid the contract as a preference. *Held*, that it is not voidable. *Bailey* v. *Baker Ice Machine Co.*, 36 Sup. Ct. 50.

For a discussion of the questions involved in these cases, see NOTES, p. 766.

BANKRUPTCY — STATE BANKRUPTCY AND INSOLVENCY LAWS — STATE LAW SUPERSEDED AS TO FARMERS. — An insolvent farmer made a voluntary assignment for the benefit of creditors under the Pennsylvania Insolvency Law which provides for voluntary and involuntary proceedings, and for distribution of the assets and the discharge of the insolvent. (1901, LAWS OF PENNSYLVANIA, 404.) The National Bankruptcy Act expressly excepts farmers from involuntary bankruptcy, but provides for voluntary bankruptcy. (30 U. S. STAT. 544.) The assignee brings suit to set aside a fraudulent conveyance in pursuit of his right under the state statute. *Held*, that the assignee has no right to sue because the National Bankruptcy Act has superseded the Pennsyl-